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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 ANDREW B. KIMBROUGH,

10 Plaintiff,

11 v.

12 DOUGLAS WADDINGTON, *et al.*,

13 Defendants.

Case No. 08-5602 RJB/KLS

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

14 This civil rights action has been referred to United States Magistrate Judge Karen L.
15 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is
16 Plaintiff's motion for appointment of counsel. Dkt. # 21. Having carefully reviewed Plaintiff's
17 motion and balance of the record, the Court finds, for the reasons stated below, that Plaintiff's
18 motion should be denied.

19 **I. DISCUSSION**

20 There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983.
21 Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding
22 *in forma pauperis*, the court may do so only in exceptional circumstances. *Wilborn v. Escalderon*,
23 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984);
24 *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires
25 an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to
26 articulate his claims *pro se* in light of the complexity of the legal issues involved. *Wilborn*, 789
27 F.2d at 1331. Neither of these factors is dispositive and both must be viewed together before

1 reaching a decision on request of counsel under Section 1915(d). *Id.*

2 Plaintiff argues that he requires appointment of counsel because he is unable to afford
3 counsel, his imprisonment will limit his ability to litigate the issues, the matter is complex and will
4 require research and investigation, he has limited knowledge of the law and limited access to the
5 legal forum, the trial will likely involve conflicting testimony, and he has attempted to obtain a
6 lawyer with no results. Dkt. # 21, pp. 1-2. However, Plaintiff has demonstrated an adequate ability
7 to articulate his claims *pro se* and has not demonstrated that the issues involved in this case are
8 complex. Plaintiff's continued incarceration and lack of legal training also do not constitute
9 exceptional circumstances warranting appointment of counsel. While Plaintiff may not have vast
10 resources or legal training, he meets the threshold for a *pro se* litigant. Concerns regarding
11 investigation and discovery, an absence of legal training and limited access to legal materials are
12 not exceptional factors, but are the type of difficulties encountered by many *pro se* litigants.
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15 Plaintiff has also not shown a likelihood of success on the merits. *See, e.g., Wilborn*, 789
16 F.2d at 1331. Accordingly, Plaintiff's motion to appoint counsel (Dkt. # 21) is **DENIED**. The
17 Clerk is directed to send copies of this Order to Plaintiff and counsel for Defendants.
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19 DATED this 12th day of March, 2009.
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23 Karen L. Strombom
24 United States Magistrate Judge
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